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INFO RUEHAC/AMEMBASSY ASUNCION 5910
RUEHBO/AMEMBASSY BOGOTA 3223
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SIPDIS

SENSITIVE
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STATE FOR WHA/AND LPETRONI
COMMERCE FOR JANGLIN
TREASURY FOR SGOOCH

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SUBJECT: TRIBUNAL DECLARES MINING CODE ARTICLES
UNCONSTITUTIONAL

¶1. (SBU) Summary: Bolivia's Constitutional Tribunal recently declared six articles of the mining code unconstitutional, eliminating investors' rights to transfer and mortgage mining concessions. The ruling will take effect after a two-year delay, ostensibly to allow the GOB to pass legislation incorporating the change. At the same time, the tribunal upheld the practice of entering into joint-venture agreements without congressional approval. Apex Silver, Newmont, and Coeur d'Alene executives said the ruling would not immediately affect their operations but expressed concern that delegates to the upcoming Constituent Assembly would radically alter the mining code. The tribunal's ruling could have long-term implications for Bolivia's mining sector, as it not only raises questions about the nature of mining concessions, but may restrict traditional mine financing and future investment. End summary.

¶2. (U) In a May 10 ruling, Bolivia's Constitutional Tribunal declared six articles (in whole or in part) of the mining code unconstitutional. The finding eliminated investors' rights to transfer mining concessions - e.g., to buy or sell concessions or to leave them as an inheritance - and said concessions could not be mortgaged. According to the ruling, mining code articles granting these rights violated Bolivia's Constitution, which declares mineral and other resources the property of the state and specifically says they cannot be transferred to private entities. The ruling is not retroactive and will take effect after a two-year delay, ostensibly to allow the GOB to pass legislation incorporating the change.

¶3. (U) At the same time, the Constitutional Tribunal upheld the ability of public and private entities, both domestic and foreign, to enter into joint-venture agreements for the development and execution of mining projects. In so doing, the tribunal rejected the popular argument that the Constitution requires congressional approval of all contracts governing the exploitation of natural resources.

¶4. (SBU) Apex Silver, Newmont, and Coeur d'Alene executives said the ruling would not immediately affect their operations. Apex Silver representatives admitted June 12 that many of the firm's San Cristobal concessions were mortgaged but said the two-year implementation delay would prevent any immediate material affect on the company's finances. Executives said it was possible, however, that banks could recall the firm's mortgages at the expiration of the two-year deferral. Newmont executives told Econoff that the company had no outstanding mortgages and expected to close its remaining gold mine before the deadline, thus avoiding problems related to the tribunal's finding. Coeur d'Alene executives, meanwhile, said that since the company's San Bartolome mineral reserves and resources were not held under concession, the ruling would have no significant impact on operations.

¶5. (SBU) Executives welcomed the two-year deferral of the Constitutional Tribunal's findings but expressed concern that delegates to the upcoming Constituent Assembly would radically alter the mining code. Everything, they noted, would be fair game, and the Assembly could easily modify or re-write existing regulations, possibly going beyond the Constitutional Tribunal's ruling to further change the rights and attributes associated with mining concessions.

¶6. (SBU) Comment: The Constitutional Tribunal's finding could have long-term implications for Bolivia's mining sector, as it not only adds to political and economic uncertainty, but also raises questions about the nature of mining concessions and may restrict traditional mine financing and future investment. Company executives noted that losing the ability to mortgage concessions would limit money-raising options and

stifle project development. If implemented as written, one executive commented, the ruling could be the "death" of mining in Bolivia - strangling a sector crucial to the country's long-term economic growth. End comment.

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